

KIMBERLY RAMIREZ
November 14, 2012

C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Kimberly Ramirez,)
)
Plaintiff,)
)
v.) Civil Action No. 4:12-cv-1922
)
24 Hour Fitness USA, Inc.,)
et al.,)
Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF

KIMBERLY RAMIREZ

November 14, 2012

Volume 1 of 1

ORAL AND VIDEOTAPED DEPOSITION of KIMBERLY RAMIREZ,
produced as a witness at the instance of 24 Hour Fitness
USA, Inc., and duly sworn, was taken in the above-styled
and numbered cause on the 14th of November, 2012, from
10:03 a.m. to 12:02 p.m., before Connie H. Lindsay, CSR,
in and for the State of Texas, reported by machine
shorthand, at the offices of Dollinger Law, 700 Gemini,
Suite 120, Houston, Texas, pursuant to the Federal Rules
and the provisions stated on the record.

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APPEARANCES

FOR THE PLAINTIFF:

Mr. Scot G. Dollinger
DOLLINGER LAW
700 Gemini
Suite 120
Houston, Texas 77058
(281) 488-4600

FOR 24 HOUR FITNESS USA, INC.:

Mr. Tarush R. Anand
BROWN SIMS, P.C.
1177 West Loop South
Tenth Floor
Houston, Texas 77027-9007
(713) 629-1580

ALSO PRESENT:

Ms. Chrissy Miller, Videographer

Republic Services, Inc.
(713) 957-0094

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1 THE REPORTER: Pursuant to the Rules?

2 MR. ANAND: Yes.

3 MR. DOLLINGER: Yes.

4 THE REPORTER: Signature?

5 MR. DOLLINGER: Yes.

6 THE VIDEOGRAPHER: Today is November 14,
7 2012. The time is approximately 10:01 a.m. We are on
8 the record.

9 THE REPORTER: Please raise your right
10 hand to be sworn.

11 (Witness sworn)

12 KIMBERLY RAMIREZ,
13 having been first duly sworn, testified as follows:

14 EXAMINATION

15 BY MR. ANAND:

16 Q. Good morning.

17 A. Good morning.

18 Q. Would you please state your full name for the
19 record.

20 A. Kimberly Ramirez.

21 Q. Okay. Ms. Ramirez, my name is Tarush Anand.
22 I'm the attorney for 24 Hour Fitness USA, Inc. Do you
23 understand that?

24 A. Yes.

25 Q. Today is the second time we've met. Correct?

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1 A. No.

2 Q. -- car accident but the 24 Hour --

3 A. Yes.

4 Q. -- Fitness incident. Okay.

5 A. Sorry.

6 Q. Okay. So besides these two instances, is
7 there any other time where you've been charged with a
8 crime?

9 A. No.

10 Q. When did you sign up for a membership with 24
11 Hour Fitness?

12 A. When they first opened. December of -- oh,
13 gosh. I don't remember exactly when they opened. It
14 was December 17th. Maybe they opened in 2008?

15 Q. Okay. Had you been a member at a 24 Hour
16 Fitness club prior to that?

17 A. No.

18 Q. Had you been a member of any other fitness
19 chain before that?

20 A. Yes. Fitness Connection.

21 Q. Any other fitness clubs besides those two?

22 A. The YMCA.

23 Q. Okay. Any others?

24 A. No.

25 Q. Okay. When were you a member of Fitness

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1 Connection?

2 A. Labor -- I signed -- I signed up on Labor Day
3 of the same year that I went to 24 Hour Fitness. I was
4 just there for a little while. I believe it was 2008.
5 I can't remember exactly what year.

6 Q. Okay. So Labor Day the same year but before
7 you signed up for the 24 Hour --

8 A. Yes.

9 Q. -- Fitness membership.

10 A. It wasn't open yet.

11 Q. And when did you give up your Fitness
12 Connection membership?

13 A. When I signed up for 24 Hour Fitness.

14 Q. So it was immediately before that?

15 A. Yes.

16 Q. Okay. What about the YMCA? When were you a
17 member there?

18 A. I started in January of -- I believe it was
19 2008. And I left there right before I went to Fitness
20 Connection.

21 Q. Okay. Just so we're clear, January of the
22 same year that you signed up for 24 Hour Fitness.

23 A. Yes.

24 Q. Okay. Was there any particular goal or
25 purpose you had in mind when signing up for gyms that

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1 year?

2 A. Yes. To lose weight.

3 Q. We all have that goal occasionally.

4 Were there any specific plans you had?

5 A. I was just going to make major changes to my
6 life and get healthy and lose weight and just be
7 healthy, happy.

8 Q. Just let me clarify my question a little bit.
9 That was a poor question on my part. My fiancée
10 sometimes will go -- say, "I want to go sign up for this
11 gym because they have a great spinning class." So did
12 you have any --

13 A. Oh.

14 Q. -- plans like that?

15 A. No.

16 Q. Yeah. "I'm going to go to these classes"?

17 A. No.

18 Q. In general you wanted to start working out.

19 A. Yes.

20 Q. Okay. When you went to YMCA, did you have a
21 general routine for working out?

22 A. Yes.

23 Q. What was that?

24 A. I would do my cardio. I would go in the
25 evening, do my cardio. And then just do some weight

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1 exercise, things like that. Weightlifting training.

2 Q. Would you do any classes at the YMCA?

3 A. I may have done one or two. Not many.

4 Q. Why did you leave the YMCA to go join Fitness
5 Connection?

6 A. I felt like they had a better -- the Y in
7 Baytown is very small. And it was hard to get
8 equipment -- you know, to be able to use the cardio
9 equipment when I wanted to. It was a bigger gym.

10 Q. Okay. Then at Fitness Connection did you have
11 a regular workout routine?

12 A. Yes. I -- the same thing. I did my cardio,
13 and I would do my -- my weightlifting. And I may -- I
14 don't know. I don't think I did any classes there.
15 Maybe one or two. I was trying to break out of my -- my
16 shell a little bit.

17 Q. Why did you decide to leave Fitness Connection
18 to go to 24 Hour Fitness?

19 A. 24 Hour Fitness was just a much better gym.

20 Q. Is Fitness Connection the one that
21 advertises --

22 A. Uh-huh.

23 Q. -- 5, \$10 or something?

24 A. \$10 a month, yes.

25 Q. Is it any good?

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1 A. I don't like Fitness Connection. I don't --
2 they -- I don't feel comfortable there. For some reason
3 I just don't feel comfortable there.

4 Q. My fiancée has been trying to get me to switch
5 to Fitness Connection, the same -- same thing at a lower
6 price.

7 A. I wouldn't do it. No, it's not the same.

8 Q. All right. The 24 Hour Fitness. Once you
9 signed up at 24 Hour Fitness, did you have a regular
10 workout routine?

11 A. Yes.

12 Q. What was that?

13 A. I would go in the morning. I switched to the
14 morningtime. And I would do my cardio, and I would do
15 the weights. And I actually added swimming in. And
16 then I like to sit in the steam room.

17 Q. Would you do cardio, weight, swimming each
18 time you were there? Or would you rotate these around?

19 A. I pretty much did it each day.

20 Q. Okay. And what about classes at 24 Hour
21 Fitness?

22 A. I did do classes at 24.

23 Q. Did you start right away? Or is that
24 something you --

25 A. No.

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1 Q. -- transitioned into?

2 A. I -- I transitioned into it.

3 Q. Are you still a member at 24 Hour Fitness
4 today?

5 A. Yes.

6 Q. Do you still go work out today?

7 A. I haven't been able -- I -- I tried. I go
8 sometimes, but I can't go regularly.

9 Q. When did you first find out that the 24 Hour
10 Fitness club was opening up in your area?

11 A. Maybe a month or two before it opened up. I
12 lived right across the street, and I saw that they were
13 putting something in. So I -- I just pulled in and
14 asked the workers.

15 Q. Did you decide right away that you wanted to
16 switch?

17 A. Yes, I did.

18 Q. Okay. And did you go in to sign up soon after
19 it opened?

20 A. Yes. I believe it was maybe a week after it
21 opened.

22 Q. Okay. Do you recall going in and signing up?

23 A. Yes.

24 Q. Did you go tour the facility before signing
25 up?

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1 A. Yes.

2 Q. Okay. Do you recall who you met with?

3 A. No.

4 Q. Anything stand out to you about your tour of
5 the facility before you stood up -- before you signed
6 up?

7 A. I just liked it.

8 Q. Okay.

9 A. I was happy with it.

10 Q. Do you recall the person you spoke with
11 telling you anything about the club before you signed
12 up?

13 A. They -- they told me, you know, all the
14 details about it. They walked me through thoroughly,
15 explained the different equipment and the -- the things
16 that they had that set it apart from Fitness Connection.

17 Q. Okay. And do you recall signing a membership
18 agreement --

19 A. Yes.

20 Q. -- when you signed up?

21 I'll hand you what I'll mark as Exhibit 2
22 to your deposition.

23 (Exhibit No. 2 marked)

24 Q. (By Mr. Anand) Try to put the sticker in the
25 middle of the sheet here so I don't cover up anything.

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1 A lot of text all over there.

2 Does that look familiar to you?

3 A. Uh-huh.

4 Q. Good. There's a few signatures on there. So
5 if we look on the first page, the box on the top right,
6 "Monthly Membership," is that your signature?

7 A. Yes.

8 Q. Okay. And bottom left, just above "Your" --
9 in parentheses, "Member Signature," is that your
10 signature?

11 A. Yes.

12 Q. Let's go on to the third page.

13 A. (Complies)

14 Q. Bottom left, is that your signature?

15 A. Yes.

16 Q. And bottom right, is that your signature?

17 A. Yes.

18 Q. And then the last page is a checklist. Bottom
19 left, is that your signature?

20 A. Yes.

21 Q. Okay. Do you recall signing this document?

22 A. Yes.

23 Q. Okay. And the signatures on here we've looked
24 at, those are your signatures?

25 A. Yes.

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1 Q. Did you read the document before signing it?

2 A. Yes.

3 Q. Did you understand what it said?

4 A. Yes.

5 Q. Okay. Have that back, please?

6 A. (Complies)

7 Q. Thank you.

8 A. Uh-huh.

9 Q. And I believe you said you transitioned into
10 attending classes after signing up.

11 A. Yes.

12 Q. Describe for me generally how that started.

13 A. I just felt I needed, you know, to change
14 things up. So I believe I did a -- I started with some
15 morning classes, like a step class and Pilates.

16 Q. How soon after signing up membership did that
17 start?

18 A. Maybe a few months. Maybe six months.

19 Q. Actually -- if I could briefly jump back. If
20 you wouldn't mind grabbing Exhibit 2 for me, please.

21 A. Okay.

22 Q. If you look at the bottom, the middle and the
23 top right, do you see the date?

24 A. Uh-huh.

25 Q. Says December 16, 2007?

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1 A. 7, yes.

2 Q. Does that sound right?

3 A. Yes.

4 Q. And so then all the prior clubs we talked
5 about, you would have signed up for those in 2007?

6 A. Yes.

7 Q. And started your membership at 24 Hour Fitness
8 in 2007, as well.

9 A. Yes.

10 Q. Okay. So a few months after signing up, you
11 started transitioning into morning classes.

12 A. Yes.

13 Q. When did you first start doing the yoga class?

14 A. That particular -- that was the first, maybe
15 second time I had gone to that class. I think it was
16 the first time.

17 Q. And you're talking about the day of the
18 incident?

19 A. Yes.

20 Q. Okay. So that may have been the first time
21 you were -- you had gone to that class.

22 A. To that class, yes.

23 Q. Had you been to any other yoga classes before
24 that?

25 A. Maybe one or two.

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1 Q. At 24 Hour Fitness?

2 A. Yes.

3 Q. And just want to be clear. Were there
4 multiple yoga classes at 24 Hour Fitness?

5 A. At the time, yes.

6 Q. Okay. So you may have gone to other versions
7 of the yoga class previously one or two times.

8 A. Different time, different -- yes, different
9 classes, different times, different days.

10 Q. But with that instructor that particular --

11 A. That was the first time.

12 Q. Okay. Okay.

13 MR. ANAND: Why don't we take a break for
14 a second while we swap out tape.

15 THE WITNESS: Okay.

16 MR. ANAND: If you want to stretch your
17 feet, as well, you're welcome to.

18 THE WITNESS: Okay.

19 THE VIDEOGRAPHER: It's 10:57. We're
20 going off the record.

21 (Break from 11:00 a.m. to 11:08 a.m.)

22 THE VIDEOGRAPHER: It's 11:06. We're
23 back on the record. This is Tape 2.

24 Q. (By Mr. Anand) Okay. Ms. Ramirez, we're back
25 from a break. Do you realize you're still under oath?

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Kimberly Ramirez,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 4:12-cv-1922
)	
24 Hour Fitness USA, Inc.,)	
et al.,)	
Defendants.)	

REPORTER'S CERTIFICATION
DEPOSITION OF KIMBERLY RAMIREZ
NOVEMBER 14, 2012

I, Connie H. Lindsay, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, KIMBERLY RAMIREZ, was duly sworn by
the officer and that the transcript of the oral deposition
is a true record of the testimony given by the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney for
the witness for examination, signature and return to me by
_____;

That the amount of time used by each party at the
deposition is as follows:

Mr. Tarush R. Anand - 1 Hour 44 Minutes

Mr. Scot G. Dollinger - 0 Minutes

That pursuant to information given to the deposition

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officer at the time said testimony was taken, the following includes counsel for all parties of record:


Mr. Tarush R. Anand, Attorney for 24 Hour Fitness USA, Inc.

Mr. Scot G. Dollinger, Attorney for Plaintiff

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to the Federal Rules will be certified to after they have occurred.

Certified to by me this _____ day of _____, 2012.



Connie H. Lindsay, Texas CSR 3110
Expiration Date: 12/31/2014
Firm Registration No. 563
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